STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
vs	)	ICC Docket No. 08-0569
Illinois Bell Telephone Company	)	Rehearing
	)	
Investigation of specified tariffs declaring	)	
certain services to be competitive	)	
telecommunications services.	)	

PARTIAL DRAFT PROPOSED ORDER
Submitted by
the People of the State of Illinois on Rehearing

PUBLIC-REDACTED VERSION
Material claimed to be confidential by Illinois Bell Telephone Company
indicated by * xxx *****

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The People of the State of Illinois, by Attorney General Lisa Madigan, submit the following Draft Partial Proposed Order as allowed by the Administrative Law Judge. This document describes the positions of the People of the State of Illinois, but does not attempt to describe the positions of other parties except as necessary to understand the Attorney General's position.

I. Procedural Background

On August 1, 2008 and September 15, 2008, Illinois Bell Telephone Company (the Company or Illinois Bell), also known as AT&T Illinois, filed tariffs reclassifying its residential services in the Rockford, Davenport, Peoria, Springfield, Champaign, and East St. Louis LATAs or MSAs as competitive. The areas affected by the reclassification have been referred to as the Greater Illinois LATAs or MSAs in this investigation.

After the reclassification, the Commission initiated an investigation pursuant to section 13-502 of the Public Utilities Act. 220 ILCS 5/13-502. In an Order dated June 11, 2009, and modified on June 24, 2009, the Commission accepted the reclassification, with certain conditions. Among those conditions was that:

> [Illinois Bell] shall significantly increase the availability of DSL by October 24, 2010 by expanding the number of wire centers with DSL service to 99% of wire centers it operates in the Greater Illinois LATAs and make DSL available to 90% of the total customer living units in its territory within the Greater Illinois LATAs.

Amendatory Order at 2 (amending June 11, 2009 Order at 98).

The People of the State of Illinois and Illinois Bell each filed an Application for Rehearing pursuant to Section 10-113 of the Public Utilities Act, and both parties raised issues related to this condition. The Commission granted Illinois Bell's Application for Rehearing on July 29, 2009

On Rehearing, Illinois Bell submitted an Initial Brief supported by the Affidavit of W. Karl Wardin requesting that this condition be eliminated. The Staff, the People of the State of Illinois, and the Citizens Utility Board each submitted Responsive Briefs on September 18, 2009 in support of the condition. The People of the State of Illinois attached four exhibits to their Responsive Brief. Illinois Bell filed a Reply Brief on October 2, 2009 reiterating its position. The parties were given the opportunity to cross examine witnesses, but all parties waived cross examination. In lieu of a hearing, the People of the State of Illinois moved to admit AG Rehearing Exhibit 5, which was allowed. Illinois Bell, the Staff, and the People of the State of Illinois filed draft proposed orders as allowed by the Administrative Law Judge.

II. Preliminary Legal Matters

Section 10-113 of the Public Utilities Act authorizes the Commission to reconsider its decision upon an Application for Rehearing. "If, after such rehearing and consideration of all the facts, including those arising since the making of the rule, regulation, order or decision, the Commission shall be of the opinion that the original rule, regulation, order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may

rescind, alter or amend the same." 220 ILCS 5/10-113. Under Section 13-502, under which this docket was originated, Illinois Bell bears the burden of proof. 220 ILCS 5/13-502(b).[1] Upon rehearing, Illinois Bell again bears the burden of proof because it is seeking to change the terms of the Commission's Order.

III. Applicable Statutes

This docket was initiated under section 13-502 of the Public Utilities Act, which addresses the classification of services as competitive or non-competitive. As part of that determination, the Commission is directed to consider:

> (1) the number, size, and geographic distribution of other providers of the service;
> (2) the availability of functionally equivalent services in the relevant geographic area and the ability of telecommunications carriers or other persons to make the same, equivalent, or substitutable service readily available in the relevant market at comparable rates, terms, and conditions;
> (3) the existence of economic, technological, or any other barriers to entry into, or exit from, the relevant market;
> (4) the extent to which other telecommunications companies must rely upon the service of another telecommunications carrier to provide telecommunications service; and
> (5) any other factors that may affect competition and the public interest that the Commission deems appropriate.

220 ILCS 5/13-502(c). In considering these factors in its June, 2009 Order (at page 94), the Commission referred to the General Assembly's stated policies found in Section 13-103 and asked "how we might accomplish the General Assembly's stated goal of substituting competition for regulation while ensuring

[1] Section 13-502 provides in relevant part, that: "[i]n any hearing or investigation [regarding the proper classification of a service], the burden of proof as to the proper classification of any service shall rest upon the telecommunications carrier providing the service." 220 ILCS 5/13-502(b).

customer choice." (Citing 220 ILCS 5/13-103(a-b)). The Commission concluded that it was necessary to adopt the conditions it adopted in Docket 06-0027 (for the Chicago LATA) to comply with the statute and conform to the General Assembly's goals. Among the conditions adopted for the Greater Illinois LATA was the voluntary commitment Illinois Bell made in the context of Docket 06-0027 to expand DSL service to 99% of its wire centers and to serve 90% of its customers in the Chicago LATA.

The Universal Telephone Service Protection Act, which the Commission relied upon in making its June, 2009 decision in this docket states that the policy of the State of Illinois includes that:

> (f) development of and prudent investment in advanced telecommunications services and networks that foster economic development of the State should be encouraged through the implementation and enforcement of policies that promote effective and sustained competition in all telecommunications service markets.

220 ILCS 5/13-103(f). This policy is consistent with federal law, which also encourages the deployment of advanced telecommunications services such as high speed Internet service. Section 706(c)(1) of the Telecommunications Act of 1996 provides:

> The Commission *and each State commission* with regulatory jurisdiction over telecommunications services *shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans* (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications markets, or other regulatory methods that remove barriers to infrastructure investment.

47 U.S.C. §1302 (emphasis added). Just last year, in October, 2008, Congress

adopted the Broadband Data Improvement Act that states:

> The Federal Government should also recognize and encourage *complementary State efforts* to improve the quality and usefulness of broadband data and should encourage and *support the partnership of the public and private sectors in the continued growth of broadband services and information technology for the residents and businesses of the Nation*.

47 U.S.C. §1301(4) (emphasis added). See also, e.g., 47 U.S.C. §1304 (federal money available for state efforts to ensure that all citizens in a State have access to affordable and reliable broadband); 47 U.S.C. §1305(e)(1)(applicants for broadband funding may be a state or political subdivision thereof).

IV. Jurisdictional Arguments

Illinois Bell argues that the FCC has classified DSL service as an information service; that the FCC established a national policy of "nonregulation of information services;" and that the FCC has preempted state "economic, public-utility type regulation" that interferes with that policy. Vonage Holdings, 19 FCC Rcd 22404 (2004). Brief on Rehearing of AT&T Illinois at 9. In response, the Staff, the AG, and the Citizens Utility Board assert that the broadband condition the Commission adopted in its June, 2009 Order does not impose "economic, public-utility type regulation" such as oversight over profit levels, rates, or terms and conditions of service. They further assert that FCC orders about the regulation of Voice over Internet Protocol telephone service do not supersede federal statutes, such as Section 706 of the Telecommunications Act of 1996, that specifically authorizes states to encourage broadband deployment

through "price cap regulation, regulatory forbearance, [or] measures that promote competition in the local telecommunications market." 47 U.S.C. §1302(a).

The Commission has concluded that removing the price caps applicable to Illinois Bell's services promotes competition in the local telecommunications market.[2] High speed Internet access is part of that telecommunications market, irrespective of whether the FCC characterizes broadband service as an information service or a telecommunications service. Federal law recognizes that states may promote broadband deployment in a market where, as here, the incumbent carrier has been relieved of virtually all price regulation, and the broadband mandate will promote the "public interest, convenience, and necessity." 47 U.S.C. §1302(a). Moreover, the original record contains substantial evidence, submitted by Illinois Bell, about the demand for broadband service and the use of Voice over Internet Protocol services as an alternative to dial tone service. Federal law does not prevent the Commission from requiring expanded high speed Internet access as a condition to the price deregulation resulting from the Commission's Order in this docket.

The General Assembly directed the Commission to use the tools and authority Congress made available to the states to open markets to competition and new services. 220 ILCS 5/13-102(d)("the federal Telecommunications Act of 1996 established the goal of opening all telecommunications service markets to competition and accords to the states the responsibility to establish and enforce

[2] The People of the State of Illinois did not oppose that finding in regard to packages of services, but do oppose it in regard to measured service and ancillary services. See People of the State of Illinois Application for Rehearing, filed on e-docket on July 10, 2009.

policies necessary to attain that goal."). Federal law authorizes the Commission to adopt the broadband conditions of the June, 2009 Order in light of the evidence showing lower than average high speed Internet access in those exchanges making up the Greater Illinois area, and the deregulatory effect of the Commission's approval of the competitive classifications requested by Illinois Bell.

V. Position of Illinois Bell Telephone Company

Illinois Bell argues that the Commission lacks jurisdiction to require it to expand high speed Internet access in the Greater Illinois LATAs, relying on FCC pronouncements that broadband services are "information services" and not "telecommunications services."

Illinois Bell further argues that because the Commission did not find that VoIP was a competitive option for local service, the Commission cannot require it to make high speed Internet service available as part of this reclassification investigation.

Finally, Illinois Bell submitted evidence showing the cost to comply with the Commission's condition. According to Illinois Bell, the total cost to provide DSL to 99% of its central offices in the Greater Illinois LATAs is $10.7 million, and the total cost to extend the reach of DSL to 90% of its households in the Greater Illinois LATAs is $27.6 million, totaling $38.3 million. Illinois Bell further calculated that the cost per customer likely to take the service (not all customers in the exchange, and not all customers who *could* take the service) was $1,950

per household, compared to $560 per household likely to take the service in the Chicago LATA. Illinois Bell asserts that it would have to recover $41.55 per month in the Greater Illinois LATAs to recover its capital costs from those likely to take the service, compared to only $11.93 per month in the Chicago LATA. Illinois Bell did not provide its investment cost for DSL in the Greater Illinois LATA in the aggregate, if these expansion costs were rolled into the total cost to serve that area.

Illinois Bell also argues that it spent only $17 million in the Chicago LATA to reach the same DSL standard imposed in this docket, but that only 15% of its residence access lines are affected by this docket. It claims that the financial cost of the DSL condition is disproportionate to the relief granted.

VI. Position of Staff

The People of the State of Illinois defer to the Staff to describe its position.

VII. Position of the People of the State of Illinois, by Attorney General Lisa Madigan (AG)

The People of the State of Illinois, by Attorney General Lisa Madigan ("AG"), support the adoption of the broadband condition by the Commission. The AG presented legal analysis showing that federal law authorizes state commissions to promote high speed Internet access, particularly in the context of state deregulatory action. See 47 U.S.C. §1302(a).

The AG further argues that AT&T was required by the Federal Communications Commission to provide broadband access to 100% of the residential living units in its service area by December 31, 2007 as a condition – accepted without reservation by AT&T -- for the FCC's approval of the merger between AT&T and Bell South in December, 2006.[3] In the Matter of AT&T Inc. and Bell South Corporation, Application for Transfer of Control, FCC 06-189, WC 06-74, Appendix F (Dec. 29, 2006), attached as AG Rhg Exhibit 1. The AG pointed out that the record showed that Illinois Bell and its affiliates provide wireline service (e.g. DSL) to substantially less than 85% of the residential customers in the Greater Illinois LATAs (i.e. *** XXXXX ***),[4] raising concern about both consumers' access to VoIP and their ability to bundle local telephone and Internet service in these areas. AG Cross Exhibit 32 confidential.[5]

The AG argued that while Illinois Bell claimed that even exchanges without AT&T DSL service were "100% broadband capable" Illinois Bell failed to

[3] Appendix F, paragraph entitled "Promoting Accessibility of Broadband Service" states: By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory. To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T/BellSouth will make available broadband Internet access service to the remaining living units using alternative technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units." AG Rhg Exhibit 1.

[4] Affidavit of Wardin, Attachment 6. See also footnote 10 for each exchange.

[5] AG Cross Ex. 32 showed that *** XXXXXX*** of the consumers in the Greater Illinois LATAs have access to DSL from Illinois Bell or its affiliates.

identify or present any AT&T non-wireline Internet service that it offers consumers. The AG referred to Illinois Bell Response to AG Data Request 8.5 and ICC Staff Data Request JZ 3.04, which included two links showing the Internet access services available in Illinois. The web site displays only wireline DSL and U-verse service. In response, Illinois Bell asserted in its Reply Brief that consumers could type in their address and see a link to satellite service. The details of satellite service, "provided by WildBlue," are contained in AG Rhg Exhibit 5.[6] The charges "start at around $55 per month. Plus, for $299, we'll deliver all the equipment you need." AG Rhg Ex. 1 at page 2 of 3. This can be compared to DSL service that ranges from $10.00 per month to $35 per month for speeds up to 6 megabits per second, and is significantly higher than the $41.55 "cost" Illinois Bell identified as the cost to provide service to households in the Greater Illinois LATAs that currently lack service. Affidavit of Wardin, Attachment R-2. Satellite service cannot support the same services as DSL, i.e., VoIP, real-time online gaming, or VPN (virtual private network). AG Rhg Ex. 5 at 2 of 8. Further, consumers are only offered satellite service if they cannot obtain DSL service.

The AG noted that although the Commission did not include its rationale for importing the DSL build-out commitment made in the Chicago LATA case (Docket 06-0027) into the Greater Illinois LATAs, the importance of high speed Internet access to the economic development of the State and consumers' interest in that service are matters of both state and federal public policy. See,

[6] Pages to AG Rhg Exhibit 5 are cited in groups corresponding to the pages for each link, e.g., 1 of 3, 1 of 9, 1 of 8.

e.g., 47 U.S.C. §1302 et seq.; 20 ILCS 661/5 ("The deployment and adoption of high speed Internet services and information technology has resulted in enhanced economic development and public safety for the State's communities, improved health care and educational opportunities, and a better quality of life for the State's residents."). The original record as well as the record on rehearing are adequate to justify Commission attention to AT&T Illinois's dismally low broadband deployment levels in the Greater Illinois LATAs.

The AG answered Illinois Bell's argument that because the Commission did not base its reclassification order on the existence of "over-the-top" VoIP service, the availability of broadband "has no bearing" on this case. Brief on Rehearing of AT&T Illinois at 12. The AG noted that Illinois Bell ignores the testimony submitted by its own witness, who testified that 63% of Illinois consumers subscribe to broadband service, and that broadband is a key component of the telecommunications market. AT&T Illinois Ex. 3.1 at 18 The Commission properly conditioned the competitive classification of telephone services on the availability of DSL in the Greater Illinois LATAs.

In response to Illinois Bell's argument that cable modem service is available in areas covering 99% of AT&T Illinois's access lines in the Greater Illinois LATAs, the AG pointed out that maps submitted by Illinois Bell show substantial portions of some exchanges without cable modem service. ATT Illinois Ex. 1.0, Sch. WKW-11. The AG pointed out that Illinois Bell evidently believes that consumers need not have a choice of Illinois Bell-provided, wireline broadband, and that if cable modem is available in some parts of an exchange, it

can assume that the entire exchange is served. However, Illinois Bell's own Schedule WKW-11 showed no cable modem service in portions of the following areas:

a. Rockford exchange in the Rockford LATA
b. Edgington exchange in the Davenport LATA
c. Ipava, Fiatt, Farmington, Trivoli, Hanna City, Peoria and Delavan exchanges in the Peoria LATA
d. Gibson City, Champaign Urb, Fithian and Oakwood in the Champaign LATA
e. Petersburg, Athens, and Riverton in the Springfield LATA
f. Edwardsville, Greenville, Mount Vernon, Kinmundy, Iuka, Kell, Dix and Mount Vernon in the East St. Louis LATA.

The AG pointed out that the size of the unserved areas varies, but assuming the accuracy of the maps provided by Mr. Wardin, there are sizable unserved areas, particularly in the Rockford exchange. More significantly, six of the areas that Illinois Bell does not serve do not have ubiquitous cable modem service either.[7]

The AG asserted that Illinois Bell's neglect of a substantial portion of the Greater Illinois LATAs does not reflect the behavior of a company that is facing real competition for either telephone service (which can be bundled with cable modem service or provided as VoIP if adequate broadband is available) or broadband service.

The Commission's decision to condition the reclassification of residential service in the Greater Illinois LATAs on Illinois Bell's deployment of broadband was properly based on the expectation that competition requires the provision of

[7] Those exchanges are: *** XXXXXXXXXXXXXXXXXXXXX XXXXX. *** AG Rhg Exhibit 4 (Response to AG data request 9.2 confidential).

all telecommunications services. The AG argued that even if there is cable modem service in some of the areas that do not have DSL service, Illinois Bell is effectively abandoning customers who want broadband service and leaving them with only one wireline broadband service provider. This is not how a competitive market should operate, and is inconsistent with the General Assembly's expectation that competition will develop in the telecommunications industry.

In response to Illinois Bell's argument that the price tag of $38.3 million to bring broadband service to 90% of Greater Illinois LATA residential customers is too costly, the AG pointed out that Illinois Bell can be expected to receive between $28 and $35 million more from the same consumers using the same services and will save about $5.7 million due to lost rate reductions under alternative regulation. AG Ex. 1.0 at 10. Further, the AG noted that Illinois Bell, as a whole, reported Total Operating Revenue and Net Operating Revenues of $3.35 billion and $761 million for 2007, respectively, constituting a 20.40% return on equity. AT&T Illinois Ex. 7.0 at 6, 9. The Company reports earnings on a statewide basis – it does not disaggregate its operations into LATAs. AG Ex. 3.0 at 7. Further, "at least as far back as 2004, total company returns were higher than jurisdictional Illinois intrastate returns," indicating that interstate services such as broadband service (which is classified as "interstate") are producing very favorable returns to Illinois Bell and its affiliates on an aggregate basis. AG Ex. 3.0 at 7, 8-14. The investment necessary to bring the six Greater Illinois LATAs into the twenty-first century is insignificant against the overall revenues and profitability of the Company. In addition, Illinois Bell could expect to both receive

revenues from broadband customers and to *retain* customers if it could bundle broadband service with other services, such as local, long distance, and wireless telephone service.

The AG argues that the purportedly higher costs associated with expanding wireline high speed Internet service in the Greater Illinois LATAs should be considered in light of the Company's overall cost and pricing strategy. The AG asserts that Illinois Bell is not made up of fiefdoms of little companies each of which must independently support all local costs. Rather, Illinois Bell has substantial high density, low-cost service territory, but the rates it charges across the state are the same. Illinois Bell has not lowered the prices of broadband service in those parts of the Chicago LATA that have extremely low cost and high density, and it is unreasonable to suggest that it is "burdensome" to invest in the less dense areas because those areas, without reference to price and cost averaging, are too costly to serve. This approach is unfair to non-urban consumers and is contrary to the goals of universal service, which require that costs and prices be averaged so that all consumers have both access to the system, and the ability to call others on the system – even those in remote areas.

By arguing that unserved Greater Illinois LATA customers must cover the entire cost of serving them, without reference to the rest of the Company, the other parts of the Greater Illinois LATAs, or the surplus revenue received to serve low-cost customers, Illinois Bell is disregarding and undermining the goals of

universal service that underpin both federal and state law. See, e.g., 47 U.S.C. §254; 220 ILCS 5/13-102, 13-301.

The AG states that a more reasonable assessment of cost would aggregate costs and revenues within all competitive LATAs recognizing that investment in broadband will help retain customers because broadband is part of the competitive market. Similarly, the costs and revenues from all Illinois Bell high speed Internet customers should be aggregated to determine the overall return on investment. By isolating cost recovery to only currently unserved customers, Illinois Bell overstates the cost to new customers, and ignores the economies of scale inherent in utility service.

The AG added that even assuming that Illinois Bell will need to spend $38.3 million to serve 90% of the residential customers in the Greater Illinois LATAs and provide service in 99% of the wire centers, the evidence in the original record demonstrated that when Illinois Bell raises its prices in the Greater Illinois LATAs to match the price increases in the Chicago LATA (as of November, 2008), it will take only three years for Illinois Bell to generate between $28 and $35 million more from the same consumers using the same services, while Illinois Bell will save about $5.7 million due to lost rate reductions under alternative regulation. AG Ex. 1.0 at 10. The AG asserts that Illinois Bell does not shirk from taking more money out of the Greater Illinois LATAs in the form of higher rates, but shudders at the thought of reinvesting it back into the community to improve both access to and choice for high speed Internet service.

The Commission should make an independent evaluation of whether the $38.3 million that Illinois Bell has identified as the cost of complying with its order is unreasonable, or is necessary to promote the public interest in light of the price consumers will pay as a result of price deregulation. If prices are to be treated as competitive, it is only appropriate that consumers have choice for both telephone and broadband services (including the option to choose Illinois Bell or VoIP).

The AG takes issue with Illinois Bell's argument that the "low" density of the Greater Illinois LATAs makes DSL deployment uneconomical. According to AT&T Illinois Ex. 1.0, Sch. WKW-11, other ILECs and service providers, including small ILECs such as MidCentury Telecom, have made broadband service available to a larger percentage of households than Illinois Bell, despite having significantly lower density than Illinois Bell. Density of 136 households per square mile, particularly in a company with average density significantly higher, should not be an obstacle to ubiquitous broadband deployment. Even in an exchange in the Greater Illinois LATA with density close to that of the Chicago LATA, however, Illinois Bell has not offered and does not plan to expand the reach of its wireline, high speed Internet service. Mr. Wardin reports that the density of the *** XXXXXXXXXXXXXXXXXXX *** households per square mile, compared to 571 in the Chicago LATA. The AG asks: Why are *** XXXX *** of customers in the Rockford exchange denied the choice of high speed Internet access by Illinois Bell when the density of that exchange is very close to the density of the Chicago LATA area? See Aff. Of Wardin, Attachment 5.

The AG asserts that the need for Commission action is highlighted by a review of Illinois Bell's limited plans for broadband expansion. Currently, *** XXXX *** of Greater Illinois LATA households do not have access to Illinois high speed Internet service, with the percentages varying by LATA.[8] It projects that *** XXXXX *** or only *** XXXXX *** more customers, will have broadband service on October 30, 2010. The Company has produced no plans for broadband expansion beyond October 30, 2010. Response to Staff Data Request JZ 3.06.

The AG pointed out that the deployment level in the Greater Illinois LATAs is significantly lower than it was in the Chicago LATA (*** XXXXXXXXXX ***).[9] This indicates that those consumers do not have the choice for broadband or for bundling that consumers in the Chicago LATA had. If the market for the Chicago LATA and the Greater Illinois LATAs are to be considered comparable, the level of broadband availability and choice in the Greater Illinois LATAs needs to increase to the levels mandated in the Order issued on June 11, 2009 and amended on June 24, 2009.

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[8] Illinois Bell identified the percentages served today and anticipated to be served in 2010 in each LATA as follows:

***XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX ***

Affidavit of Wardin, Attachment 9.

[9] Affidavit of Wardin, Attachment 6.

The AG asserted that in light of the significance of broadband service as a facilitator of competition (a factor upon which Illinois Bell relied as support for its contention that consumers in the Greater Illinois LATAs have a choice among alternative residential service providers), it is not surprising nor is it inappropriate for the Commission to consider Illinois Bell's (or an affiliate's) provision of broadband to consumers in the Greater Illinois LATAs. The telecommunications services market includes broadband service as well as local telephone service. The Commission's Order conditioning its acceptance of Illinois Bell's reclassification of its Greater Illinois LATAs residential service as competitive on the widespread availability promotes the goal of universal and competitive broadband service, and is an appropriate pre-condition to the price deregulation that accompanied the competitive classification. The AG concluded that in the absence of compliance with the broadband mandate, the Commission should reverse Illinois Bell's competitive classifications approved in this docket.

VIII. Position of the Citizens Utility Board

The People of the State of Illinois defer to the Staff to describe its position.

IX. Commission Analysis and Conclusions

The Commission notes that the original record in this docket contained substantial information about the disproportionately low level of DSL availability in the Greater Illinois LATA as well as about the importance of broadband to Illinois consumers. Indeed, Illinois Bell submitted evidence that 98 percent of

Illinois households had access to cable modems, while AG Cross Exhibit 32 showed that DSL was available to a considerably lower percentage of Greater Illinois customers. Nonetheless, Illinois Bell witnesses asserted that the availability and demand for high speed Internet service made VoIP an option to local telephone service, and broadband subscribers would face a low incremental cost of switching service to VoIP once they migrated to broadband Internet access service. AT&T Illinois Exhibit 3.1 at 18. ICC Docket 08-0569, Order at 17 (June 11, 2009). Although we decline to find VoIP to be an alternative to basic local service currently, we believe that high speed Internet access is important for all regions of the state irrespective of whether consumers use it for VoIP or for other purposes.

Our approval of Illinois Bell's reclassification of residential service in the Greater Illinois LATAs was intended to mirror the conditions in the Chicago LATA, where we allowed reclassification in 2006. Although the expansion of DSL service was done by agreement in that case, we believe that the goal of having DSL service available to the vast majority of consumers both enables competition for telephone service and ensures competition for advanced telecommunications services, which our General Assembly states as a key Illinois telecommunications policy. 220 ILCS 5/13-103(f). We cannot view the competitive situation in the Greater Illinois LATAs as equivalent to that in the Chicago LATA if equivalent advanced telecommunications services are not generally available.

We find that both federal law and state law recognize our authority to adopt a broadband requirement as part of our decision to deregulate Illinois Bell's residential pricing. Section 706(c)(1) of the Telecommunications Act of 1996 provides:

> The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications markets, or other regulatory methods that remove barriers to infrastructure investment.

47 U.S.C. §1302. The Universal Telephone Service Protection Act states that the policy of the State of Illinois includes that:

> (f) development of and prudent investment in advanced telecommunications services and networks that foster economic development of the State should be encouraged through the implementation and enforcement of policies that promote effective and sustained competition in all telecommunications service markets.

220 ILCS 5/13-103(f). The Commission's decision to condition the acceptance of Illinois Bell's competitive classification in the Greater Illinois LATAs on Illinois Bell's expansion of broadband service is consistent with these provisions and both advances competition and fosters the economic development of the State.

We reject Illinois Bell's argument that federal law preempts our authority to address the low level of DSL availability in the Greater Illinois LATAs. The FCC's determination that broadband is an information service may prevent us from imposing rates, terms, and conditions on Internet Service Providers, but the Telecommunications Act of 1996 specifically recognizes a state role in promoting

both competition and the deployment of sufficient infrastructure to support high speed Internet service. An administrative agency cannot contradict a Federal statute that recognizes state authority, and the condition to expand DSL does not affect Illinois Bell or an affiliate's control over rates, terms, and conditions of broadband service.

We also find that the cost that Illinois Bell has identified to bring the Greater Illinois LATAs to the same level of service found in the Chicago LATA is not burdensome or prohibitive. We are mindful of the size of Illinois Bell and of its ability to average costs as well as prices across a large customer base in both more and less dense areas of Illinois. It is inappropriate and contrary to universal service principles to suggest that costs to extend service will be recovered solely from the customers that take the service, rather than be included in the total costs incurred by the Company to offer a service as essential as high speed Internet access. The incremental cost to extend service to the unserved areas is small.

Even if the recovery of the investment to expand DSL is limited to the Greater Illinois LATAs, however, the evidence shows a close correspondence between the $38.3 million investment Illinois Bell has identified and the increased revenues that Illinois Bell can be expected to achieve if it brings its Greater Illinois LATA prices up to the levels reached in the Chicago LATA after price deregulation. The evidence showed that Illinois Bell will receive between $28 and $35 million more revenue from the same consumers using the same services and will save about $5.7 million due to lost rate reductions under

alternative regulation as a result of the removal of price regulation. Based on these figures alone, without regard to price or averaging, it is appropriate to include broadband expansion as a condition to acceptance of Illinois Bell's competitive classification and price deregulation. The increased revenue opportunity that will come from price deregulation in the Greater Illinois LATAs will provide the funds necessary to expand the reach of DSL in those areas.

Illinois Bell argues that it offers satellite service in those areas where it does not offer DSL. However, satellite service cannot support VoIP or other services that DSL can support, and it is significantly more expensive than Illinois Bell's DSL offerings with fewer choices. Further, Illinois Bell does not appear to offer satellite service unless DSL is not available to a consumer location. Given its more limited capabilities,[10] we decline to find that satellite service can be considered a fair substitute for DSL service under the circumstances presented in this docket. More significantly, in the Chicago LATA satellite service is not used to provide high speed Internet service, and our intention to mirror the conditions in the Chicago LATA will be frustrated if inferior and more expensive

[10] The FCC describes satellite broadband as follows: "Downstream and upstream speeds for satellite broadband depend on several factors, including the provider and service package purchased, the consumer's line of sight to the orbiting satellite, and the weather. Typically a consumer can expect to receive (download) at a speed of about 500 Kbps and send (upload) at a speed of about 80 Kbps. These speeds may be slower than DSL and cable modem, but they are about 10 times faster than the download speed with dial-up Internet access. Service can be disrupted in extreme weather conditions."
http://www.broadband.gov/broadband_types.html#satellite

satellite service is the only service offered to large numbers of Greater Illinois households.

X. Findings and Ordering Paragraphs

The Commission, being fully advised in the premises, is of the opinion and finds that:

(1) Illinois Bell Telephone Company ("AT&T Illinois") is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act (the "Act");

(2) the Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to the Act;

(3) the recitals of facts and law and conclusions reached in the prefatory portion of this Order are supported by the evidence in the record, and are hereby adopted as findings of fact and law;

(4) the findings and conditions in the Commission's June 11, 2009 Order, as amended by the Amendatory Order dated June 24, 2009 in regard to Illinois Bell's obligation to provide DSL service to 90% of the customers and 99% of the central offices in the Greater Illinios LATAs are confirmed and remain in full force and effect.

IT IS THEREFORE ORDERED that the Commission's June 11, 2009 Order, as amended by the Amendatory Order dated June 24, 2009 in regard to Illinois Bell's obligation to provide DSL service to 90% of the customers and 99% of the central offices in the Greater Illinios LATAs are confirmed and remain in full force and effect.

IT IS FURTHER ORDERED that any objections, motions or petitions not previously disposed of are hereby disposed of consistent with this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Act and 83 Ill. Admin. Code 200-880, this Order is final; it is not subject to the Administrative Review Law.

October 16, 2009

DRAFT PREPARED BY:

PEOPLE OF THE STATE OF ILLINOIS,
BY LISA MADIGAN, ATTORNEY GENERAL

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